

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
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NASHVILLE, TENNESSEE 37243-0485

December 4, 1991

OPINION NO. U91-154

Emergency Communications Districts

QUESTIONS

1. May an Emergency Communications District created pursuant to Tennessee Code Annotated Section 7-86-101, et. seq., record the telephone calls which it receives when same are made to the number 911?
2. Does an Emergency Communications District created pursuant to Tennessee Code Annotated Section 7-86-101, et. seq., have complete authority to determine the method used in handling telephone calls made to the number 911? (Direct dispatch method, referral method, relay method, transfer method). If so, is each emergency service agency required to abide by and cooperate with said Emergency Communications District in regard to the method used in handling telephone calls made to the number 911?
3. May an Emergency Communications District created pursuant to Tennessee Code Annotated Section 7-86-101, et. seq., remain on the line and continue to record the telephone calls made to the number 911 after said telephone calls have been transferred to an emergency service agency by way of the transfer method?
4. May an Emergency Communications District created pursuant to Tennessee Code Annotated Section 7-86-101, et. seq., contract for pay with emergency service agencies or municipalities to handle and dispatch telephone calls (whether to the number 911 or to the regular number) for said emergency service agencies or municipalities?

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5. May an emergency service agency be in control of and operate a system whereby calls are made to the number 911?
6. May an Emergency Communications District created pursuant to Tennessee Code Annotated Section 7-86-101, et. seq., obtain and operate NCIC terminal?

OPINIONS

1. Yes, the district may record incoming telephone calls to the 911 number.
2. The district has the authority to determine the method to be used in handling 911 calls and the emergency service agencies must abide by this choice.
3. Recording of the call after transfer is not legal unless a party's consent has been obtained prior to the transfer.
4. The district's board may contract with a public agency to perform answering point functions, but there is no authority to so contract with a private organization.
5. The district controls the 911 system.
6. There is no authority in the Emergency Communications District Law for a district to obtain and operate an NCIC terminal.

ANALYSIS

1. The interception of telephone communications is often illegal. See 18 U.S.C. §2511 (1). It is not unlawful under federal law, however, "for a person acting under color of law to intercept a wire, oral, or electronic communication, where such person is a party to the communication or one of the parties to the communication has given prior consent to such interception." 18 U.S.C. §2511(2)(c). A "person" includes an employee or agent of any state political subdivision. 18 U.S.C. §2510(6). An emergency communications district is a "municipality". T.C.A. §7-86-106. Thus, an emergency communications district's employee or agency may record an incoming telephone call without violating 18 U.S.C. §2511.

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Tennessee law also permits the recording of a telephone conversation when one party consents. See Stroup v. State, 552 S.W.2d 418 (Tenn. Ct. Crim. App. 1977); T.C.A. §§39-14-411 & 65-21-110.

2. T.C.A. §7-86-107(a) provides:

The board of directors of the district shall create an emergency communications service designed to have the capability of utilizing at least one of the following four (4) methods in response to emergency calls:

- (1) Direct dispatch method;
- (2) Referral method;
- (3) Relay method; or
- (4) The transfer method.

The board of directors of the district shall elect the method which it determines to be the most feasible for the district.

Statutes are to be construed in accordance with the natural and ordinary meaning of the language used. Worrall v. Kroger Co., 545 S.W.2d 736 (Tenn. 1977). The word "shall" is ordinarily construed as being mandatory. Stubbs v. State, 216 Tenn. 567, 393 S.W.2d 150 (1965). Thus, T.C.A. §7-86-107(a) gives the district the authority to determine the method to be used in handling 911 calls. Implicit in this statutory scheme is the fact that emergency service agencies must abide by and cooperate with the district's decision.

3. As previously noted, the district could record incoming telephone calls since its employees or agents would be parties to the call. If a call was transferred to an emergency service agency, it is not clear that the district's employee or agent would continue to be a party. It would depend on exactly what was done and what was said. Under the "transfer method" as defined in T.C.A. §7-86-105(9) the answering point "directly transfers such request to an appropriate public safety agency or other provider of emergency services,..." The natural and ordinary meaning of this language indicates that the district would actually "give away" the call to the provider. Consequently the district's employee or agent would no longer be a party to the communication. Therefore, in order to utilize the exception found in 18 U.S.C. §2511(2)(c) the district would have to obtain a party's consent to continue recording after the transfer.


4. This Office has previously opined that an Emergency Communications District Board is authorized by the Interlocal Cooperation Act, T.C.A. §12-9-101 et seq. to

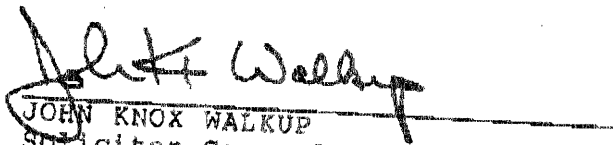
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contract with a public agency to perform answering point functions. Op. Tenn. Atty. Gen. 85-205 (June 27, 1985). There is no authority, however, for a board to contract with a private organization to answer and dispatch emergency calls. Op. Tenn. Atty. Gen. U90-49 (March 13, 1990).¹

5. The Emergency Communications District Law, T.C.A. §§7-86-101 et seq. clearly envisions the District's board as being in control of the 911 system, however, as previously discussed, the board could contract with a public agency to operate it.

6. An administrative agency's power "must be based expressly upon a statutory grant of authority or must arise therefrom by necessary implication." Wayne County v. Tennessee Solid Waste Disposal Control Board, 756 S.W.2d 274, 282 (Tenn. Ct. App. 1988). Nothing in the Emergency Communications District Law gives a District the authority, express or implied, to obtain and operate an NCIC terminal.


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Requested by:

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¹In view of the wording of your question, this office would note that T.C.A. §7-86-107(b) requires 911 to be the primary emergency telephone number.